Filed 6/8/12 In re S.C. CA1/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re S.C., a Person Coming Under the Juvenile Court Law.	
KAREN C., Plaintiff and Appellant, v. THE SUPERIOR COURT OF LAKE COUNTY, Defendant and Respondent, LAKE COUNTY DEPARTMENT OF SOCIAL SERVICES, Real Party in Interest	A134681 (Lake County Super. Ct. No. JV320218)

I. INTRODUCTION

Appellant Karen C., birth mother of A.I., R.C., and S.C., purports to appeal from the findings and orders of the juvenile court which followed the filing of petitions pursuant to Welfare and Institutions Code section 300.[1] Appellant filed the instant notice of appeal herself, prior to the appointment of counsel,[2] and specified the dates of the

[1] All further unspecified statutory references are to the Welfare and Institutions Code.

[2] At all other relevant times, appellant has been represented by counsel.

findings and orders appealed from as "3/11/09-2/6/12." These dates encompass the proceedings that began with the removal from her custody of her two older children, A.I. and R.C., included the termination of her parental rights and order of adoption as the permanent plan for A.I. and R.C., and ended with the termination of her parental rights and order of adoption as the permanent plan for youngest child S.C., who was removed from appellant shortly after birth in September 2010. The Lake County Department of Social Services (Department) has filed a motion to dismiss this appeal on the ground that appellant's parental rights to all three children have been terminated, those terminations have been upheld by this court, and remittiturs have issued in each appeal relating to this juvenile court proceeding.[3] We will grant the motion.

II. FACTUAL AND PROCEDURAL BACKGROUND

Appellant's three children have been involved in a number of juvenile dependency proceedings before this court, two of which have resulted in unpublished opinions containing thorough recitations of the background facts and proceedings pertaining to each child.[4] Our abbreviated description of the facts is taken primarily from these two opinions.

A. *A.I. and R.C.*

In March 2009, A.I., who was almost three years old, and R.C., who was 19 months old, were taken into protective custody as a result of appellant's substance abuse, history of domestic violence with her boyfriend Daniel C.,[5] history of untreated mental health issues, and the unsanitary condition of the home. The jurisdiction report described

[3] The Department requests that we take judicial notice of each of the three section 366.26 orders in the juvenile matter, the decisions of this court in related appeals, case Nos. A130946, A130945, A129343, and A125459, and the issued remittiturs. We will do so. In addition, we will take judicial notice of the case file in case No. A133217, including the issued remittitur. (Evid. Code, §§ 452, subd. (d), 459.)

[4] See *In re A.I.* et al. (Jul. 15, 2011, A129343) 2011 WL 2749633 [nonpub. opn.] and *Daniel C. v. Superior Court*, (June 15, 2011, A130945) 2011 WL 2518697 [nonpub. opn.].

[5] Daniel C. is the presumed father of R.C. and S.C. The alleged father of A.I. is Alexander I. Neither father is a party to this proceeding.

both appellant and Daniel C. as developmentally delayed and as having had multiple contacts with social services and law enforcement. Appellant and Daniel C. received family reunification services.[6]

In the six-month review report, the Department recommended termination of services for appellant and Daniel C. There had been more incidents of domestic violence and both parents' compliance with services was poor. The psychologist who evaluated appellant concluded that, due to psychiatric and cognitive deficiencies, along with cannabis abuse, appellant was not able to utilize services or parent children without supervision, and that no services could help sufficiently within the statutory time frame of a juvenile dependency proceeding. At the contested review hearing, the court terminated services and set the matter for a section 366.26 hearing. The Department's report stated that the children were in good health and doing well in the foster/prospective adoptive home together. During visits, appellant demonstrated little ability to interact appropriately with the children and virtually no ability to anticipate their needs or give them direction. On the original date of the section 366.26 hearing, the court ordered appellant to be drug-tested that day; the test was positive for marijuana. At the continued section 366.26 hearing, the court terminated parental rights and ordered a permanent plan of adoption for both children.

Appellant filed a timely notice of appeal. This court's opinion affirming the orders appealed from was issued on July 15, 2011. The remittitur issued on September 14, 2011.

B. *S.C.*

In September 2010, the Department filed an original petition alleging that newborn S.C. came within the provisions of section 300, subdivisions (b) and (j), because of

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[6] Both appellant and Daniel C. filed notices of appeal in July 2009 from the court's dispositional findings and orders. The appeals were dismissed pursuant to stipulation of the parties to allow the Department to make a renewed effort to comply with the notice requirements of the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) (ICWA). (*In re A.I.*, *supra*, 2011 WL 2749633 at pp. *1, *6, fn. 5.) The remittitur issued on April 15, 2010.

appellant's history of untreated mental health issues, her history of domestic violence with Daniel C., her marijuana use, and her neglect of S.C.'s older siblings. The petition also alleged that appellant was not capable of utilizing reunification services, and did not have the cognitive ability to provide a safe environment for her children. Following a second psychological evaluation, the Department recommended that family reunification services not be provided to either parent and that a section 366.26 hearing be set. At the conclusion of the disposition hearing, the court bypassed reunification services pursuant to section 361.5, subdivision (b), and set the matter for a section 366.26 hearing. (See *Daniel C. v. Superior Court*, *supra*, 2011 WL 2518697 at pp. *1-*6.)

Both appellant and Daniel C. filed in this court notices of intent to file a writ petition to challenge the juvenile court's decision, but this court dismissed appellant's case when no petition subsequently was filed. (See case No. A130946.) Daniel C. filed a petition for extraordinary writ challenging the juvenile court's decision to bypass services and to set the matter for a section 366.26 hearing. This court denied the petition on the merits. (*Daniel C. v. Superior Court*, *supra*, 2011 WL 2518697.) The remittitur issued on July 18, 2011.

In the meantime, in April 2011, S.C. was placed in a prospective adoptive home. Reports indicated that she was healthy and meeting developmental milestones.

In August 2011, at the section 366.26 hearing, the court found S.C. adoptable and terminated appellant's parental rights. Appellant filed a timely notice of appeal. Appellant's counsel reviewed the record and filed a brief indicating that she found no arguable issues to raise on appeal. Appellant was notified of this and given the opportunity to file a letter regarding any issues she felt should be reviewed on appeal.[7] Appellant did not file any such letter or respond in any way. The appeal was dismissed. The remittitur issued on May 1, 2012.

[7] Counsel for appellant expressly stated that she did "not seek to withdraw from this case. If the Court finds that any issue raised by appellant requires further briefing, I am available to brief any such issues to the Court."

III. DISCUSSION

Appellant attempts to appeal from findings and orders of the juvenile court. On the notice of appeal, she specified dates that encompass the entire pendency of the proceedings involving her three children. However, attached to the notice of appeal is the juvenile court's "Findings and Orders for Status Review," filed in that court on February 6, 2012, for a post-permanent plan review hearing for S.C. The Department has moved to dismiss the appeal. Appellant has filed no opposition to the motion. The attempt to appeal fails for several reasons.

First, to the extent that appellant intends to appeal from the juvenile court's post permanent plan review findings and order dated February 6, 2012, appellant has no standing to do so. "Following a termination of parental rights, the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child." (§ 366.3, subd. (a).)

Second, the time to appeal every order and decision of the juvenile court in case No. JV320218 to which appellant was a party has elapsed.

Third, appellant in fact timely appealed or filed a notice of intent to file a writ petition to challenge a number of the juvenile court's decisions. All of those appellate matters have been resolved by opinion or dismissal.

Finally, remittiturs have issued as to all decisions of this court arising out of case number JV320218 to which appellant was a party, thereby terminating our jurisdiction and transferring it back to the juvenile court. When a decision of this court, including an order dismissing an appeal involuntarily, becomes final in this court (30 days after filing) and the time for our Supreme Court to grant or deny review has run, this court must issue a remittitur. (Cal. Rules of Court, rule 8.264, subd. (b)(1), rule 8.272, subd. (b)(1), rule 8.490, subd. (c).) When the remittitur issues, the jurisdiction of the reviewing court ceases and that of the trial court attaches. Except where the issuance was a result of inadvertence, mistake, or fraud, the remittitur cannot be recalled for the purpose of modifying the judgment. (See 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 844, p. 906, and cases cited therein.)

"The order of the reviewing court is contained in its remittitur, which defines the scope of the jurisdiction of the court to which the matter is returned. [Citations.]" (*In re Anna S.* (2010) 180 Cal.App.4th 1489, 1499 (*Anna S.*).) "Until the remittitur issues, the trial court cannot act upon the reviewing court's decision. [Citations.]" (*Id.* at p. 1500.) The *Anna S.* court stated, "We know of no rule, statute or precedent that exempts dependency proceedings from generally applicable appellate rules governing disposition and finality. [Citations.]" (*Id.* at p. 1501.) Nor do we.

IV. DISPOSITION

The motion to dismiss is granted and the appeal is dismissed.

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Haerle, J.

We concur:

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Kline, P.J.

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Richman, J.